

To: Indiana Judicial Officers and Clerks  
From: Lilia Judson, Executive Director, Supreme Court Division of State Court Administration  
Re: Rule Amendments  
Date: December 28, 2012

## REMINDER ABOUT NEW RULE AMENDMENTS

Following is a summary of the new rule amendments, most of which, unless otherwise noted, become effective January 1, 2013. The Orders amending the various rules, with the old language struck out and new language underlined, are available at the Indiana judiciary web site at: <http://www.in.gov/judiciary/2684.htm>.

### **Trial Rules**

**Service by email.** When entering an appearance, a party may voluntarily select to accept service from other parties or the court by email. *See*, Ind. Trial Rule 3.1(A)(4). Trial Rule 5(B)(3) now spells out how service by fax or email is accomplished. Of particular interest is subparagraph (d), which sets out the method for determining completion of fax or email service that occurs on a Saturday, Sunday, legal holiday, day the court is closed, or after 5:00 p.m. local time of the recipient. Such service is deemed complete the next day that is not a Saturday, Sunday, legal holiday, or day the court is closed.

It should also be clear that the amendment does not relieve a party from the obligation to serve electronic copies of discovery as set out in T.R. 26(A.1).

**Failure to rule on a motion.** Trial Rule 53.1(E) has been amended to require the clerk to record the date and time of the filing of a praecipe seeking the withdrawal of the submission of a case from a judge for failing to rule in a timely manner on the praecipe itself. The previous rule required notation of the date and time in the clerk's praecipe book, which many clerks do not maintain.

**Chronological Case Summary.** As a reminder, T.R. 77(B) was amended to clearly spell out that the judge in a case is responsible for causing entries to be made in the Chronological Case Summary of all judicial events. Since taking over from the trial court clerks the duty to determine if a judge has failed to act in a timely manner as provided in T.R. 53.1 and 53.2, we have encountered far too many situations where important judicial events (hearings, filing of motions) have not been recorded on the CCS.

**Special Judges.** Indiana Trial Rule 79, concerning the selection of special judges, was amended with the goal of expediting the process of selecting special judges. As a result, T.R. 79(E), covering selection of a special judge by the trial court and T.R. 79(F), providing for the selection of special judges through the use of a striking panel have been repealed.

Beginning January 1, special judge selection is a more streamlined two step process. Either the parties will agree to and find an eligible special judge as provided in T.R. 79(D), or that failing, a special judge will be selected pursuant to local rule as provided in T.R. 79(H). In particular take note that T.R. 79(D) was amended to reduce the time that a judge selected to serve as special judge has to decide whether to accept selection under T.R. 79(D). The new time limit is seven (7) days. Judges should encourage attorneys engaged in selecting a special judge under T.R. 79(D) to involve a potential special judge in the process so that the parties are not selecting a judge who is not able to serve.

Because of the change in the process, most existing local rules will need to be amended. Since the use of striking panels was seen as a factor causing delays in special judge selection, they were eliminated from the Trial Rule and will not be approved by the Supreme Court for use under local rules.

For questions with regard to amending local rules to comport with new T.R. 79, please contact Jim Maguire at [jim.maguire@courts.IN.gov](mailto:jim.maguire@courts.IN.gov) or call 317-232-2542.

For questions with regard to the special judge selection process, please contact Tom Carusillo at [tom.carusillo@courts.IN.gov](mailto:tom.carusillo@courts.IN.gov) or call 317-232-2542.

Other significant changes in the area of special judges can be found in T.R. 79(I). If a special judge is unavailable to hear a case on the date a hearing or trial is scheduled, the special judge may appoint a judge *pro tempore*, temporary judge, or a senior judge of the court to hear the matter provided he has not previously had jurisdiction of the case removed from him. Further, the regular judge of the court where the case is pending may be appointed provided he has not previously had jurisdiction of the case removed from him.

### **Criminal Rules**

**Change of Judge and Change of Venue.** Criminal Rule 12(D) has been amended to provide that requests for change of judge or venue must be made within thirty (30) days of the initial hearing. This provides a defendant with the opportunity to consult with an attorney that might not have been possible under the old ten-day rule.

Further, when a case has been remanded for a new trial, the time for requesting a change of judge or venue runs thirty (30) days from the defendant's first appearance in person before the trial court following the remand.

**Abstract of Judgment.** New Criminal Rule 15.2 provides that upon sentencing a person for any felony, the court shall complete an abstract of judgment in an electronic format in the Court's INcite system. This amendment complies with new statutory requirements but also expands the requirement to all felonies in order to enable courts to provide criminal conviction data necessary for legislative policy decisions.

For questions with regard to the Abstract of Judgment INcite application, please contact Lisa Thompson at [lthompson@jtac.in.gov](mailto:lthompson@jtac.in.gov) or 317-234-2542.

### **Administrative Rules**

**Senior Judges.** New procedures have been put in place for the use of senior judges. First, judges requesting the appointment of senior judges to serve their courts may, in addition to naming specific senior judges, also request that all senior judge certified by the Judicial Nominating Commission be appointed to serve in their particular courts. This will give judges the flexibility to select any certified senior judge without the need of obtaining an appointment Order from the Supreme Court for a senior judge not on the court's list.

Second, a judge wishing to use a senior judge must issue an order naming the senior judge who will serve and must designate the day or days that the senior judge will be serving. A sample form will be provided on which the judge will designate whether the senior judge is serving just during business hours or for an entire 24 hour period. This order, along with a verification from the senior judge that he does not practice in the court will be filed in the Record of Judgments and Orders and sent to State Court Administration. *See*, Ind. Administrative Rule 5(B)(4). A sample order naming the senior judge can be found at <http://www.in.gov/judiciary/admin/files/sr-judges-order-naming-sj.pdf>. A sample of a verification from the senior judge can be found at <http://www.in.gov/judiciary/admin/files/sr-judges-verification-re-practice-law.pdf>

The next amendment deals with special judge cases assigned to a senior judge prior to their retirement from the bench. If the circumstances that led to the appointment of the special judge no longer exist, the senior judge may choose to return the case to the regular judge of the court, provided that no other disqualification exists. *See*, Admin. R. 5(B)(3)(e). However, to encourage senior judges to retain their pre-retirement special judge cases, they will now receive senior judge credit for such service.

Also, two amendments were made concerning senior judges serving as mediators and attorney surrogates. Administrative Rule 5(B)(2) now provides that a senior judge's service days as a mediator under Rule 5(B)(9) or as an attorney surrogate under Rule 5(B)(10) shall not count against the service days allocated to a trial court. The second amendment, to Rule 5(B)(10), provides that a senior judge serving as an attorney surrogate may receive senior judge credit, and may also receive senior judge per diem payments so long as the senior judge is not being compensated as provided in Admission and Discipline Rule 23 § 27(g). The senior judge must make an election to receive senior judge credit and compensation to the appointing court, in writing, within sixty (60) days of the appointment.

Finally, in exceptional circumstances a judge and a senior judge may jointly apply to the Supreme Court for additional senior judge credit. This provision is designed to cover unusual situations that may arise in handling jury trials. *See*, Admin. R. 5(B)(6).

**Public Access.** Administrative Rule 9(G)(1)(g) has been amended to provide that orders to restrict access to criminal history information, under IC 35-38-5-5.5 and IC 35-38-8-5, and the records excluded by such an order are confidential. A similar amendment covers information related to infractions under IC 34-28-5-15 and 16.

**Reconstruction of Court Records.** Administrative Rule 10(D) has been added to create a procedure for reconstructing lost or destroyed judicial records. The judicial officer whose court exercised jurisdiction of the case whose records have been lost or destroyed may reconstruct the records and any party or interested person may, for good cause shown, petition the court to reconstruct lost or destroyed records. Interested persons as described in the rule include the custodian of the lost or destroyed record and any person designated by the court.

Notice of a petition shall be given to all parties and any interested persons in advance of a hearing, which shall be no sooner than 60 days after the petition is filed unless good cause is shown for a shorter period before the hearing. Unless waived by the parties and any interested persons, the court shall settle and reconstruct the records after a hearing. Cost of the notice shall be borne by the petitioner, unless the court determines otherwise.

Records are to be reconstructed from the "best available sources". Such sources are the most credible sources to determine the content of the lost or destroyed record, and include certified copies, copies accompanied by verified statements and verified statements.

Within one (1) year of the court's decision, any party or interested person who did not receive notice may seek to set aside the court's order. After one (1) year the reconstruction is conclusively presumed to be final.

## **Admission and Discipline Rules**

**Foreign Licenses.** Effective July 12, 2012, the Court increased the application fee for an applicant seeking admission of a foreign license to \$875.00. *See*, Ind. Admission and Discipline R. 6 § 3.

**Disposition of Show Cause Orders.** The Court also amended Rule 23 § 10 to include disposition of a show cause petition by dismissal, cooperation, disbarment or resignation as a basis for ordering reimbursement to the Commission.

**Duties upon Resignation.** In addition Rule 23 § 26 was amended to require attorneys who have resigned, pursuant to § 17, to fulfill the notice and other duties required from attorneys who have been disbarred.

**Business Counsel License.** A person who accepts is continuing employment by a person or entity engaged in business in Indiana, other than the practice of law, may be granted a business counsel license if the person establishes an office or other systematic and continuous presence in Indiana. This change removes the previous requirement that a person become a resident of Indiana. In addition the amendment now permits a person who is admitted in a foreign country to seek a business counsel license that is limited by the provisions of Rule 5 § 4(a)-(d). The previous rule only permitted those who were admitted before the highest court of another state to seek a business counsel license.

## **Rules of Professional Conduct**

**Unauthorized Practice of Law.** Ind. Professional Conduct Rule 5.5(d) has been amended in an attempt to clarify who may provide legal services in Indiana without being admitted to practice in Indiana. The amendment provides that a lawyer not admitted in Indiana, but admitted in another state or foreign jurisdiction, in good standing, may provide legal services in Indiana if:

1. the lawyer **does not** establish an office or other systematic and continuous presence in Indiana for the practice of law **and** the services are provided to the lawyer's employer or organizational affiliates **and** are not services for which Indiana requires temporary admission; or
2. the services are authorized by federal law or other Indiana law.

Contrary to possible interpretation of the old rule, this amendment makes clear that a lawyer who does establish an office or other systematic presence to practice law on behalf of the

lawyer's employer or organizational affiliates must be admitted to practice in Indiana, which most frequently occurs via the business counsel license process.

Please address questions about the above rule amendments to Tom Carusillo at [Tom.Carusillo@courts.in.gov](mailto:Tom.Carusillo@courts.in.gov), 317-232-2542 or me at [Lilia.Judosn@courts.in.gov](mailto:Lilia.Judosn@courts.in.gov).